IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.A No.454 of 2003

Reserved on : March 14, 2007

Decided on : March 29, 2007

Karan Singh and another **....Appellants.**

VERSUS

State of Himachal Pradesh **....Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Dev Darshan Sud, Judge.

Whether approved for reporting?

For the Appellants : **M/s T.R. Chandel, Vinay Thakur & V.K. Verma, Advocates.**

For the Respondent : **Mr. Som Dutt Vasudeva, Additional Advocate General, with Mr. D.S. Nainta, Deputy Advocate General.**

Surjit Singh, Judge

Appellants are aggrieved by the judgment of the specially notified Sessions Court, whereby they have been convicted and sentenced of an offence, under section 20 of the Narcotic Drugs and Psychotropic Substances Act, for allegedly possessing commercial quantity of *Charas.*

2. Prosecution version may be summarized thus. On 23.10.2001, a police party, headed by HC Ramesh Chand PW-10, left Police Station Ani for village Shwad at 5.10 p.m. Around 5.45, when the police party reached a place called Chamba Nallah Ka Mor (Curve of Chamba Stream), five men were spotted sitting by the side of the road and talking to each other and one man was standing

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Whether the reporters of the local papers may be allowed to see the Judgment?

close-by alongwith his Motorcycle. On seeing the Police, the five persons, who were sitting and talking among themselves and with the man standing close-by stood up and took to their heels. They ran towards the Nallah. Four of them were able to escape. However, the fifth one was overpowered. This fifth one was appellant Yashwant Singh, who was carrying a bag with him in which there was *Charas*, which on weighment, was found to be 4 kgs. 350 grams. The sixth man, who was standing near the five sitting persons and close to whom a Motorcycle was parked, was appellant Karan Singh. He had been overpowered before he could think of fleeing. On search of the dickey of his Motorcycle *Charas* was recovered, which weighed 5 kgs. Two samples each from the stuff recovered from the two appellants were taken. Samples and the bulk stuff were sealed in separate parcels. Search and seizure Memos. were prepared. Thereafter *Ruka* (Report), addressed to the SHO, was prepared for the formal registration of the case and it was sent to the Police Station through one of the members of the Police Party, namely Constable Mukesh Chand. On the basis of this report, case was formally registered against the two appellants and four other persons, who had been successful in escaping and whose names were disclosed to the Police by the appellants. Two samples, one each from the stuff recovered from the two appellants, were sent to the Chemical Examiner for analysis and his opinion. The Chemical Examiner opined that the samples were of *Charas*.

3. Both the appellants and their four accomplices, who had been successful in running away from the spot, were sent-up for trial. On the conclusion of the trial, the two appellants were convicted of

the offence under Section 20 of the Narcotic Drugs and Psychotropic Substances Act and sentenced to undergo rigorous imprisonment for 10 years and fine of Rs.1 lac each and in default of payment of fine to undergo rigorous imprisonment for a further period of one year each. Their four accomplices were, however, acquitted.

4. We have heard the learned counsel for the appellants as also the learned Additional Advocate General and gone through the record.

5. On behalf of the appellants, it has been urged that the prosecution did not examine the sole non-official witness, namely Shiv Ram, and that the evidence of the official witnesses of search and seizure is contradictory and full of discrepancies, which does not inspire confidence. Contradictions and discrepancies, which were pointed out, are being dealt with, one by one, hereinbelow.

6. The first contradiction pertains to the point where appellant Yashwant Singh was allegedly overpowered by the Police officials after being chased. PW-1 Bhup Singh Constable stated that there was a river at a distance of 200 mtrs. from the road and that Yashwant Singh was overpowered at a point about 20 yards across the river (stream). However, PW-2 Mukesh Chand, in his cross-examination, stated that the stream is situated at a distance of 50 mtrs. from the point where five persons were sitting and talking among themselves and with appellant Karan Singh and that appellant Yashwant Singh was overpowered within a minute of his fleeing. PW-10 HC Ramesh Chand, who headed the Police party, stated that Yashwant Singh was overpowered at a point 20 yards from the point where he was spotted sitting with four other persons.

7. Not only that the three witnesses have made contradictory statements on this point, but the testimony of PW-1 Bhup Singh is completely belied by the site plan prepared by PW-10 Ramesh Chand on the spot soon after the alleged search and seizure. In this site plan, road is shown by Mark 'D'. The point where appellant Yashwant Singh and four other persons, who were able to flee, were sitting and talking is shown by letter 'A'. The point where appellant Karan Singh was standing close to the five persons is shown by letter 'C'. To the South of these points, 'A', 'B' & 'C', rivulet is shown by letter 'F'. The point where appellant Yashwant Singh was allegedly overpowered is shown by letter 'E'. This point shown by letter 'E' is between points 'A', 'B' & 'C' on one side and point 'F' (the rivulet) on the other. That means Yashwant Singh was overpowered somewhere between the road from where he fled and the rivulet, or say before he crossed the rivulet.

8. Another point on which the three witnesses have made contradictory statements is the distance of village Shwad from the point where the appellants and their four alleged accomplices were initially spotted. According to PW-1, village Shwad is at a distance of 1 km. from the spot. PW-2 Mukesh Chand says that the said village is at a distance of half a kilometer. According to PW-10 Ramesh Chand, the Investigating Officer, the distance between the spot and village Shwad is 3-4 kms.

9. Again, PW-2 Mukesh Chand, who was deputed with the *Ruka* (report), Ex. PW-2/A, says that he delivered the *Ruka* to the MHC of the Police Station at 8.45 p.m. and thereafter the formal FIR was registered and he returned to the spot with the case file, which

means a copy of the FIR. The *Ruka,* Ex. PW-2/A, also contradicts the Investigating Officer on this Point. *Ruka* is timed 8.10 p.m. on the spot and in the formal FIR, Ex. PW-8/A, the time of receipt of information at the Police Station is recorded as 8.45 p.m. If it is so, the question of PW-2 Mukesh Chand having returned to the spot at 7.30 p.m., with a copy of the formal FIR, as testified by PW-10 Ramesh Chand, could not have arisen.

10. Another contradiction is as to when and in whose presence the search and seizure Memos. were prepared. PW-10 Ramesh Chand has stated that he had prepared the recovery Memos. before the return of the police official, who was sent to the Police Station with the *Ruka* for the formal registration of the case. The statement implies that the search and seizure Memos. were prepared by the witness after the *Ruka* was recorded and sent to the Police Station through Constable Mukesh Chand PW-2. However, Mukesh Chand says that search and seizure Memos. were prepared before he went to the Police Station with the *Ruka*. In the *Ruka* Ex. PW-2/A also it is recorded that search and seizure had been effected and separate memoranda thereof prepared, meaning thereby that the Memos. were prepared before PW-2 Mukesh Chand was deputed to the Police Station. Thus, PW-10 Ramesh Chand, Investigating Officer, is contradicted by PW-2 Mukesh Chand and the contents of Ex. PW-2/A, the *Ruka*.

11. Further, all the above named Police officials have stated that dickey of the Motorcycle was locked and that appellant Karan Singh produced its key and with that key the dickey was unlocked. PW-10 Ramesh Chand stated that the key was taken into possession

by a separate Memo. However, no such Memo. was produced in the Court either with the challan or even during the course of the trial. Not only this, there is no reference in the *Ruka* Ex. PW-2/A about the dickey being locked and appellant Karan Singh having produced the key of the dickey. On the contrary, what is recorded in *Ruka* Ex. PW-2/A is that in the presence of appellant Karan Singh his Motorcycle No. HR-06F-9331 was searched and in the course of such search from the dickey of the Motorcycle a plastic bag containing balls and sticks of *Charas* was recovered.

12. Defence of the appellants is that some persons were there, who on seeing the Police took to heels towards the rivulet and while fleeing threw the stuff and the Police planted the said stuff on them. They deny that Yashwant Singh also tried to flee and was overpowered. They have stated that they had nothing to fear because they were not having any incriminating or contraband stuff with them and so they made no attempt to run away and remained on the spot, but the Police, on suspicion that they were the associates of those who had run away throwing the stuff, planted the stuff on them and arrested them.

13. The contradictions and discrepancies in the prosecution evidence, as noticed hereinabove when seen in the light of the fact that the sole non-official witness has been withheld, not only create reasonable doubt about the correctness of the prosecution version, but also probablize the aforesaid defence plea. The contradiction as to the point where appellant Yashwant Singh was overpowered while allegedly fleeing by itself probablizes the defence plea.

14. As a result of the abovestated position, the appeal is accepted. The judgment of the trial Court, in so far as it convicts and sentences the appellants for the offence under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, is set aside and the appellants are acquitted. The appellants, being in custody, are ordered to be released forthwith, in case their detention is not required in connection with any other case.

(Surjit Singh), J.

March 29, 2007(sd) **(Dev Darshan Sud), J.**